Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2016-51

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File number: 8690-C210-201409219

City of Hamilton – Terms and conditions of a Municipal Access Agreement with Bell Canada

*The Commission **approves with changes** the rates, terms, and conditions of a Municipal Access Agreement (MAA) between the City of Hamilton (the City) and Bell Canada.*

The MAA will govern Bell Canada's access to highways and other public places in the municipality, allowing Bell Canada to provide its services throughout the municipality, and therefore maximizing the choice of telecommunications service providers for residents and businesses.

Introduction

1. In 2012, a Municipal Access Agreement (MAA) between the City of Hamilton (the City) and Bell Canada expired.[1] Since then, the parties have been unsuccessful in coming to an agreement on a new MAA.

2. On 22 August 2014, the City filed an application with the Commission in which it requested interim and final relief regarding a proposed MAA with Bell Canada.[2]

3. Regarding interim relief, the City requested that the Commission prohibit Bell Canada from further constructing or maintaining its infrastructure in the municipality until either Bell Canada and the City agree to a new MAA, or the Commission approves the terms and conditions of the City's proposed MAA. The Commission denied the City's request for interim relief by letter dated 8 June 2015.

4. Regarding final relief, the City requested that the Commission approve the terms and conditions of the City's proposed MAA with Bell Canada. Among other objectives, the proposed MAA would establish performance requirements and set out new provisions governing non-performance. These provisions were proposed with a view to compel Bell Canada to adhere to what the City referred to as good, industry-

[1] An MAA sets out the terms and conditions of a carrier's access to highways and other public places under a municipality's jurisdiction that is required to provide telecommunications services, including broadcasting services, to the public.

[2] While the application was filed on 22 August 2014, it was only posted on the Commission's website on 13 January 2015 due to disputes over the confidential nature of certain information filed as part of the application. The Commission addressed which documents were not to be disclosed on the public record in a letter dated 19 December 2014.

recognized engineering practices as a condition of obtaining consent to conduct works in the City's public rights-of-way (ROWs).

5. Bell Canada submitted that the City's arguments ignore the extensive work and success of the Model MAA.[3] Bell Canada requested that the Commission direct the parties to negotiate using the Model MAA consensus items[4] as a baseline for negotiations, which would enable the parties to discuss whether there are unique circumstances that warrant departures from any specific clauses set out in the Model MAA.

6. The Commission received interventions relating to the merits of the City's application from Allstream Inc.; the Federation of Canadian Municipalities; and Quebecor Media Inc., on behalf of Videotron G.P. The public record of this proceeding, which closed on 24 July 2015, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Issues

7. A significant number of issues were raised on the record of this proceeding. The Commission considers that the following matters must be addressed in detail:

    - the inclusion of the term "other public places" in the MAA's introductory recitals;
    - the definition of the term "Work" in the MAA; and,
    - the allocation of costs associated with municipality-initiated facility relocations in the MAA.

8. Matters in dispute not related to the issues identified above are addressed in the Appendix to this decision.

[3] The Model MAA was developed by the CRTC Interconnection Steering Committee (CISC) Municipal Access Working Group (MAWG), a group composed of municipal, industry, and Commission representatives. The Commission approved the Model MAA in Telecom Decision 2013-618.

[4] In the Model MAA, the clauses on which the CISC MAWG participants agreed are referred to as "consensus items." "Non-consensus items" refer to clauses on which there was no agreement. In Telecom Decision 2013-618, the Commission determined that in the absence of specific disputes over access to municipal ROWs, it may not be appropriate for it to provide specific wording for the non-consensus items.

The principles applied by the Commission to resolve disputed terms of access

9. As noted above, this proceeding was initiated by the City, which sought Commission approval of its proposed MAA. Bell Canada's position is that the Commission should direct the parties to negotiate using the Model MAA as a baseline for negotiations, and that the City should be required to justify every instance in which it proposes to deviate from the Model MAA.

10. The Model MAA was never intended to be binding. It was developed and is intended to be a resource to assist parties in reaching mutually acceptable agreements, and may also serve as a useful resource for the Commission when it is required to adjudicate disputes such as this one.

11. In making its determinations, the Commission has applied the guiding principles established in Decision 2001-23, in which the Commission addressed an MAA dispute involving Ledcor Industries and the City of Vancouver (the Ledcor decision). This includes the principle of cost neutrality, i.e. that costs directly related to a carrier's infrastructure should be paid by the carrier, not municipal taxpayers. The Commission has acknowledged, however, in both Telecom Decision 2008-91 (the Baie-Comeau decision) and Telecom Regulatory Policy 2009-150 (the Vancouver decision) that it is appropriate to deviate from this principle in certain instances, such as when the costs are incurred as a result of municipality-initiated relocation of facilities.

The inclusion of the term "other public places" in the agreement's introductory recitals

12. The City included the following recital in its proposed MAA:

> AND WHEREAS the Company wishes to construct, install and maintain its Equipment in, on, under, over, either along or across ("Within") highways, streets, road allowances, lanes, bridges or viaducts of the Municipality (singularly a "Highway" and collectively, the "Highways").

13. Bell Canada submitted that the words "or other public places" should be included, so that the recital would read "[...] highways, streets, road allowances, lanes, bridges, viaducts or other public places of the Municipality [...]" to reflect the wording in subsection 43(2) of the *Telecommunications Act* (the Act).[5]

14. Bell Canada stated that the City's consent to construct, including in other public places, is obtained through the permitting process, and that the City's proposed MAA contains a section (Section 6) that gives the City Commissioner the discretion to

[5] Subsection 43(2) of the Act states that subject to subsections (3) and (4) and section 44, a Canadian carrier or distribution undertaking may enter on and break up any highway or other public place for the purpose of constructing, maintaining or operating its transmission lines and may remain there for as long as is necessary for that purpose, but shall not unduly interfere with the public use and enjoyment of the highway or other public place.

refuse any permit for any reason, acting reasonably. Bell Canada also submitted that its proposed wording is similar to the wording contained in the Model MAA, which also includes the term "other public places."

15. The City argued that the words "or other public places" should not be incorporated since unique circumstances exist for lands that are owned by the City but are outside of established ROWs captured by its proposed wording. The City cited cemeteries as an example. The City submitted that its proposed MAA contemplates and primarily deals with access to established municipal ROWs (e.g. highways, streets, and roads), not other public places. It further indicated that other public places, such as cemeteries and parklands, are dealt with and managed separately by the City's Real Estate division.

Commission's analysis and determinations

16. In the Vancouver decision, the Commission acknowledged that the term "other public places" is potentially broad in scope. Further, it was not clear whether the terms and conditions of access to highways would necessarily be appropriate with respect to all "other public places." The Commission therefore determined that if the parties disagreed in the future as to whether a particular location qualifies as an "other public place," an application could be made to the Commission for resolution of the dispute.

17. The Commission agrees with the City that in the present case, the terms and conditions applicable to public places, such as highways, streets, and roads, may not necessarily be appropriate with respect to access to other types of public places, such as cemeteries and parklands. Given this, and the potential breadth and scope of the term "other public places," the MAA should not automatically apply to all other public places.

18. While the terms and conditions contained in the proposed MAA should automatically apply to access by Bell Canada to Highways, as defined in the agreement, the MAA should apply to other public places only when the City and Bell Canada agree to this application. In cases of access to other public places to which the parties agree that the MAA should not apply, the parties are to enter into a new agreement specific to these places.

19. As noted by Bell Canada, Section 6 of the proposed MAA already provides the City Commissioner with the discretion to refuse any permit for any reason. However, to decide whether the MAA should apply to a specific "other public place," Bell Canada and the City should be given the opportunity to reach an agreement, instead of being subject to a unilateral decision, as is the case when the City Commissioner exercises its power under Section 6.

20. Disagreements on whether a particular location is an "other public place" requiring a new and specific agreement, or whether the terms and conditions in the MAA are appropriate for such places, as well as disagreements on the specific terms of access to be included in any new and specific agreement, can be addressed through agreed-upon arbitration or by way of recourse to the Commission.

21. The recital in question will therefore read as follows:

> AND WHEREAS the Company wishes to construct, install and maintain its Equipment in, on, under, over, either along or across ("Within") highways, streets, road allowances, lanes, bridges or viaducts of the Municipality (singularly a "Highway" and collectively, the "Highways").

The definition of the term "Work"

22. The City proposed the following definition of the term "Work" as part of its proposed MAA:

> "**Work**" means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, excavation, adjustment or other alteration of Equipment Within a Highway.

23. Bell Canada argued that the City's proposed definition is overly broad and, if adopted, would result in imposing on the carrier a requirement to obtain the City's consent for a number of activities that do not require consent under the Act. Bell Canada argued that subsection 43(3) of the Act requires that a carrier obtain consent from a relevant public authority to proceed with *construction* of its network where such construction takes place on, over, under or along a public place, but does not require that consent be obtained for other purposes.

24. Bell Canada argued for a definition that would be limited to work that requires prior consent from the municipality (i.e. construction), and suggested the following:

> "**Work**" means construction for the installation, removal, maintenance, repair, replacement, relocation, excavation, adjustment or other alteration of Equipment Within a Highway.

25. However, Bell Canada also indicated that it would be willing to accept the definition of "Work" from the Model MAA if that definition were accompanied by a schedule similar to Schedule B of the Model MAA, thereby limiting the scope of activities that would be subject to a requirement to obtain a permit from the City.[6]

26. Pursuant to the Model MAA, "Work" is defined as follows:

> "**Work**" means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, operation, adjustment or other alteration of the Equipment performed by the Company Within the ROWs, including the excavation, repair and restoration of the ROWs.

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[6] Schedule B indicates the types of permits/consent that a carrier requires from a municipality (i.e. Municipal Consent, Road Occupancy Permit, or Notification Only) prior to commencing different types of work activities.

27. The City recognized that some of the activities it seeks to capture within its definition go beyond activities related to active construction. However, it submitted that Bell Canada's proposed definition is too narrow in that it would not account for the costs and challenges that the City would face in cases where it is required to make adjustments or work around Bell Canada's older infrastructure in the process of moving forward with its own activities.

28. The City argued that its proposed definition is critical to its objective of ensuring that the cost impact of Bell Canada's activities in the City's ROWs is properly accounted for. The City submitted that Bell Canada's proposed definition is contrary to the principle reflected in the Ledcor decision that a municipality is entitled to recover costs it incurs as a result of the presence of a carrier's facilities.

Commission's analysis and determinations

29. The City's proposed definition of "Work" is very similar to the definition found in the Model MAA, which Bell Canada indicated it is willing to accept, provided there is a reference to the limited types of work that require the City's consent.

30. Sections 6 to 8 of the City's proposed MAA already address the issue of when the City's consent is required. Specifically, Section 8 is clear that consent is not required for some types of work, including routine maintenance, field testing, subscriber connections, or any work necessary to restore and/or maintain uninterrupted services in the event of an emergency. Accordingly, a reference to the limited types of work that require the City's consent is not explicitly needed since the City's proposed MAA already contains provisions addressing that issue.

31. In light of the above, the definition of "Work" to be included in the MAA between the City and Bell Canada will read as follows:[7]

> "**Work**" means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, operation, adjustment or other alteration of the Equipment performed by the Company, or on its behalf, Within a Highway, including the excavation, repair and restoration of the Highways.

The allocation of costs associated with municipality-initiated facility relocations

32. On the issue of how costs associated with municipality-initiated relocation of Bell Canada's facilities should be allocated between Bell Canada and the City, the City proposed a seven-year sliding scale approach similar to the ten-year one approved by the Commission in the Vancouver decision (the Vancouver Model), albeit with a difference in the percentage of the costs the City would pay over time. Under this proposed approach, the percentage of the relocation costs to be paid by the

[7] The term "ROWs" from the Model MAA's definition is being replaced with the term "Highways" to be consistent with the terminology used in the rest of the City's proposed MAA.

municipality is determined by the number of years since the assets were originally installed, diminishing to zero percent after year seven.

33. The City submitted that its proposed approach was predictable, certain, and based upon a pre-determined cycle of diminishing responsibility by the City for the cost of relocating Bell Canada's infrastructure. This approach, in turn, requires Bell Canada to properly plan its infrastructure works with the City's medium- and long-term planning windows in mind. Furthermore, a sliding scale approach was used in the last MAA between the City and Bell Canada. The City submitted that it has made numerous assumptions in its budgeting for a number of years based upon its calculated exposure under the sliding scale approach.

34. Bell Canada acknowledged that it has signed many past agreements that use a sliding scale approach to allocate responsibility for costs resulting from municipality-initiated relocation of the company's infrastructure. However, the company submitted that it no longer considered such an approach to be appropriate. It argued that the City's proposed sliding scale arbitrarily depreciates telecommunications infrastructure. While Bell Canada agreed to compensate municipalities for their costs associated with its work, it is also seeking to more precisely recover its own costs for relocating its facilities where such relocation is initiated by the City.

35. Bell Canada argued that section 27(b) of the City's proposed MAA already addresses the City's concerns about Bell Canada not properly planning its infrastructure works with the City several years into the future. It submitted that this clause relieves the City of any obligation for reimbursement if Bell Canada is notified at the time of a permit application that a proposed installation may need to be relocated within the next three years and Bell Canada proceeds with the installation nonetheless. Bell Canada submitted that given the existence of this clause, the City is already protected from compensating the company for relocating infrastructure installed in a location that potentially conflicts with the City's three-year capital plan.

36. Bell Canada therefore argued for the model approved in the Baie-Comeau decision regarding the allocation of costs incurred to relocate TELUS Communications Company's facilities in the City of Baie-Comeau where such relocation is initiated by that city (the Baie-Comeau Model). The Baie-Comeau Model calculates and allocates relocation costs based on the ages of the specific assets being relocated, in proportion to the remaining useful life of each asset.[8] Bell Canada submitted that this model has the benefit of being objective, unlike the Vancouver Model.

37. The City argued that the Baie-Comeau Model is complex and expensive, and would compel the City to rely upon Bell Canada's life-cycle and costing claims, verify such claims itself, or seek the assistance of third-party experts.

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[8] The useful life of each specific asset captured by the Baie-Comeau decision can be found in Telecom Decision 2008-14, in which the Commission determined, among other things, the appropriate asset lives to be used in regulatory economic studies.

Commission's analysis and determinations

38. In making its determinations, the Commission has considered the principle of cost neutrality reflected in the Ledcor decision, i.e. that costs directly related to a carrier's infrastructure should be paid by the carrier, not municipal taxpayers. The Commission has acknowledged, however, in both the Baie-Comeau and Vancouver decisions, that it is appropriate, in certain circumstances, to deviate from this principle with regard to imposing liability for costs. In Decision 2001-23, the Commission indicated that the following factors would generally be relevant in allocating costs between the carrier and the municipality:

    - who has requested the relocation (i.e. the municipality, the carrier, or a third party);

    - the reason for the requested relocation (e.g. safety, aesthetics, or to better serve customers); and,

    - the date on which the request is made compared to the date of original construction (e.g. whether the request is made a considerable length of time after the original construction, or very shortly thereafter).

39. While both models proposed by the parties reflect the principle of cost neutrality to the municipality, the time period for accomplishing each differs.

40. Under the sliding scale approach, there is a complete deviation from the cost neutrality principle in the first few years, when the City is responsible for 100% of the relocation costs. The reasoning is that the City should, within its planning process, reasonably know whether the infrastructure it is authorizing to be installed will have to be relocated within the near future. Considering that with each additional year, it becomes more difficult for the City to foresee whether relocation will be required, the sliding scale approach diminishes the level of the City's responsibility over time. After a set number of years, the City is no longer responsible for any of the relocation costs, meaning the principle of cost neutrality for the City is once again applied.

41. While the Baie-Comeau Model is also a deviation from the cost neutrality principle, the amount of time before cost neutrality is once again applied is strictly related to the useful life of the specific asset being relocated, not the number of years since the asset was originally installed. Under the Baie-Comeau Model, cost neutrality for the City is once again obtained only in cases where the asset to be moved has reached or exceeded its estimated life, which is different for each asset involved.

42. The City and Bell Canada already understand the sliding scale approach, since it was applied in the last MAA between the parties. Also, under this approach, the date of installation, which can be tracked by both parties, is the key factor used to calculate the percentage of relocation costs each party will pay, heavily recognizing the City's accountability in the initial years. This approach also recognizes that the City is unable to reasonably plan around relocations during the entire life of an asset.

43. Under the sliding scale approach, the City bears costs for only a limited, pre-set number of years even though the relocations are City-initiated. However, the Baie-Comeau Model enables a carrier to be compensated during the entire duration of an asset's useful life, in most cases well beyond any reasonable time frame for planning by the City.

44. The circumstances surrounding the Baie-Comeau decision were fact-specific. Among other things, the specific assets at the heart of the associated dispute had been identified by the parties prior to the Commission determining the methodology to be used. In the present case, considering that the MAA between the City and Bell Canada will be in place until at least 2020, the assets that may need to be relocated in the future are presently unknown.

45. In addition, the Baie-Comeau Model, as applied to an open-ended and forward-looking municipal access agreement, would not give proper recognition to the broader partnership between carriers and municipalities, which benefits both parties. Carriers benefit from having in place the required infrastructure to serve as many customers as possible. As for municipalities, and as the Commission indicated in the Ledcor decision, "[the] economic base that such facilities support provides generalized benefits throughout the municipality, attracting industry, creating jobs, increasing tax revenue, etc."

46. In light of the above, the sliding scale approach is best suited to the circumstances surrounding this application.

47. The Commission disagrees, however, with the City's proposed seven-year sliding scale since under that model, the City bears 50% or less of the relocation costs starting at just year six, and 0% for year eight onwards. Under the Vancouver Model, the City would pay 35%, 20%, and 10% of the relocation costs for years eight, nine, and ten, respectively.

48. Since the relocations under consideration are initiated by the City, the City should bear appropriate costs for a commensurate period of time, which it fails to do under the proposed seven-year sliding scale.

49. Further, while the 10-year sliding scale used in the Vancouver decision was appropriate considering the specific facts of the associated dispute, it is not appropriate in the present case. Pursuant to the list of assets identified in Telecom Decision 2008-14, 16 years represents the shortest length of the useful life of Bell Canada's assets that are likely to be affected by relocation initiated by the City over the lifetime of the MAA.[9]

50. Accordingly, it would be appropriate to have a 16-year sliding scale to more accurately reflect the mutual benefits derived from the partnership between carriers

[9] Assets that are likely to be affected by relocation include, but are not limited to, underground, aerial, and buried cables; underground, aerial, and buried fibre optic; as well as poles, lines, and conduits.

and municipalities, without placing undue limitations on either party to plan future investments. Under this sliding scale, the City is primarily responsible for relocation costs in the first five years, following which its responsibility linearly diminishes to zero by the end of the 16th year.

51. Consistent with the Vancouver Model, the City will pay 100% of the costs in the first three years, because it is reasonable for the City to know whether the infrastructure it is authorizing to be installed will have to be relocated within those three years. After the first three years, the percentages will decrease approximately linearly over the remaining thirteen years of the scale.

52. Accordingly, wording of Section 25 of the MAA between the City and Bell Canada will read as follows:

> In the case of a Municipality-initiated requirement to relocate a Company facility, the following schedule is to be used to allocate costs directly attributable to such relocation. These costs include, but are not limited to, depreciation, betterment and salvage costs.

Year(s) After Installation of Equipment	**Percentage of Relocation Costs Paid by Municipality**
1	100%
2	100%
3	100%
4	90%
5	80%
6	70%
7	65%
8	60%
9	55%
10	45%
11	40%
12	35%
13	30%

Year(s) After Installation of Equipment	Percentage of Relocation Costs Paid by Municipality
14	20%
15	10%
16	5%
17 onwards	0%

Consistent with previous Commission determinations,[10] where costs directly attributable to a Municipality-initiated requirement to relocate a Company facility are incurred as a direct result of work undertaken by or on behalf of the Municipality for beautification, aesthetics, or other similar purposes, such costs are to be entirely borne by the Municipality. These costs include, but are not limited to, the depreciation, betterment and salvage costs.

Specific wording to be used for other disputed articles or provisions in the MAA

53. Set out in the Appendix to this decision are the Commission's determinations on the wording for other disputed provisions that have not been addressed above.

Conclusion

54. The Commission **approves** the City's proposed MAA, as set out in Appendix C of the City's application, subject to the modifications set out in this decision.

55. Notwithstanding this approval, the City and Bell Canada are free to negotiate departures from the Commission-approved MAA, should both parties agree to do so. Any agreed-upon changes would not need to be approved by the Commission.

Policy Direction

56. The Policy Direction[11] states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(*a*), (*b*), and (*c*) of the Policy Direction.

[10] See Telecom Decision 2007-100 and Telecom Regulatory Policy 2009-150.

[11] *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

57. Subparagraphs 1(*a*)(ii)[12] and 1(*b*)(i)[13] of the Policy Direction apply to the Commission's determinations in this decision.

58. In compliance with subparagraph 1(*b*)(i) of the Policy Direction, the Commission's findings in this decision advance the policy objectives set out in paragraphs 7(*a*), (*b*), (*c*), (*e*), (*f*), and (*h*)[14] of the Act. Because the parties have reached an impasse and further negotiations cannot be expected to be productive, market forces alone cannot be relied on to achieve the policy objectives. Consistent with subparagraph 1(*a*)(ii), in pronouncing upon only those conditions of access that were in dispute between the parties, the Commission relied on regulatory measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives. In light of the foregoing, the Commission considers that its determinations in this decision are consistent with the Policy Direction.

Secretary General

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[12] Subparagraph 1(*a*)(ii) states that the Commission, when relying on regulation, should use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary.

[13] Paragraph 1(*b*) states, among other things, that the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that (i) specify the telecommunications policy objective that it advanced by those measures and demonstrate compliance with the Policy Direction.

[14] The cited policy objectives of the Act are 7*(a)* to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; (*b*) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; (*c*) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; *(e)* to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada; (*f*) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and (*h*) to respond to the economic and social requirements of users of telecommunications services.

Related documents

- *CISC Model Municipal Access Working Group – Report on a Model Municipal Access Agreement*, Telecom Decision CRTC 2013-618, 21 November 2013

- *MTS Allstream Inc. – Application regarding a Municipal Access Agreement with the City of Vancouver*, Telecom Regulatory Policy CRTC 2009-150, 19 March 2009

- *Application by the City of Baie-Comeau regarding costs to relocate TELUS Communications Company's telecommunications facilities*, Telecom Decision CRTC 2008-91, 19 September 2008

- *Review of certain Phase II costing issues*, Telecom Decision CRTC 2008-14, 21 February 2008; as amended by Telecom Decision CRTC 2008-14-1, 11 April 2008

- *Shaw Cablesystems Limited's request for access to highways and other public places within the District of Maple Ridge on terms and conditions in accordance with Decision 2001-23*, Telecom Decision CRTC 2007-100, 25 October 2007

- *Ledcor/Vancouver – Construction, operation and maintenance of transmission lines in Vancouver*, Decision CRTC 2001-23, 25 January 2001

Appendix to Telecom Decision CRTC 2016-51

Section no. (City's proposed MAA)	Section wording as determined by the Commission	Commission rationale
1(e)	"**Contractor**" includes subcontractors, workers, suppliers and material men;	Excluded "agents" from the definition of "Contractor" to reflect the use of these separate terms in other provisions of the MAA.
1(k)	*Keep wording as proposed by the City in its proposed MAA*	While the inclusion of the words "*includes, but not limited to …*" may appear to define "Normal Activities" broadly, the activities are still limited to "*activities the Municipality undertakes on a regular basis.*"
2	This Agreement shall be deemed effective on the publication date of Telecom Decision CRTC 2016-51 and shall, unless earlier terminated in accordance with this Agreement, expire four (4) years after the first day of the month in which the Agreement is deemed effective. This Agreement shall automatically renew for up to two (2) consecutive renewal periods of five (5) years each unless either the Municipality or the Company gives written notice of its intention not to renew to the other party not less than six (6) months prior to the expiration of this Agreement or any renewal term thereof, following which all rights and privileges hereunder shall come to an end, save and except for the Company's continued use of the Highways and the Company's and Municipality's applicable obligations pursuant to Sections 15, 17, 20-27 and 30-41 of this Agreement.	In interrogatory replies, parties agreed to an initial 4-year term.
8	Despite Section 6 and Section 7, the Company may carry out routine	Removed "complies with Section 7" and replaced it

	maintenance, field testing and subscriber connections without the consent of the Commissioner, but in no case shall it carry out any physical disruption or change to the Highway or its use, without the Commissioner's prior written consent, not to be unreasonably withheld. In the event of an Emergency, the Company shall be permitted to carry out such remedial work as is reasonably necessary to restore and/or maintain uninterrupted services, providing the Company provides notification to the Commissioner within two (2) Business Days of completing the Work.	with "provides notification to the Commissioner." To comply with Section 7 as originally drafted, Bell Canada would have to obtain written consent prior to commencing work. However, Section 8 specifically deals with routine and emergency maintenance for which Bell Canada is not required to obtain prior consent. The new wording removes that contradiction.
9(b)	the Company shall provide the Municipality with contact details and have available at all times, within a reasonable time frame, a Company representative responsible for each location of Work;	Given the extent of its operations, it would be unreasonable for Bell Canada to have company employees attending all locations where work is being performed by a contractor.
9(d) and (e)	On-going inspections, and/or follow-up monitoring, of the Company's installations and Work, for conformance with the terms and conditions of a Road Occupancy Permit, may be conducted by the Municipality, as the Municipality deems reasonably necessary, at a cost shared equally between the Municipality and the Company;	This wording replaces the City-proposed wording for Sections 9(d) and (e). Having the cost shared equally between the parties puts an additional onus on the City to be reasonable in conducting the inspections, while encouraging Bell Canada to perform its work in such a way that the City will not feel the need to have the work inspected.
9(h)	if the Company breaks the paved surface of a Highway, it shall forthwith	Reflects wording agreed upon by the parties during

	temporarily repair and restore the surface of the Highway to substantially the same condition it was in before such Work was undertaken by the Company in accordance, without limitation, with the Municipality's Procedure for the Installation of Utilities on Road Allowances, as amended from time to time, and to the reasonable satisfaction of the Commissioner;	interrogatory replies.
9(k)	if the Municipality requires the Work to be stopped for any bona fide municipal purpose, cause relating to public health and safety, special events, any circumstances beyond its control or any reasonable reason having regard to the public interest in having access to communications services, including 9-1-1 access services, the Company shall cease all such Work forthwith upon receipt of verbal notice from the Municipality, which notice shall include the reason for the Work stoppage. Within two (2) business days of issuing a verbal stop-work order under this subsection, the Commissioner will provide to the Company written reasons for such order and advise the Company as to when the stop-work order may reasonably be lifted. Upon the Municipality lifting the stop-work order and immediately advising the Company of same in writing, the Company may immediately resume its Work under the existing approval;	Adding "having regard to the public interest in having access to communications services, including 9-1-1 access services" will serve to limit the scope of the discretion afforded to the City in recognition of the importance of public interest in ensuring continued access to telecommunications services, while still providing the City with the flexibility to issue a stop-work order when public health and safety, special events, or any circumstances beyond the City's control are not the primary reason(s) for issuing the order. The last sentence imposes on the City an obligation to not only lift the stop-work order once the conditions have cleared, but to immediately advise Bell Canada that the stop-work order has been lifted.
12	Upon request of the Municipality at the time of the municipal consent application, the Company shall provide to the Municipality, at the Company's expense	Removed reference to Bell Canada's 3-year capital forecast in light of evidence to the effect that the

	and within two (2) months of completing the construction or installation of any of the Equipment, "as-constructed" record drawings in an electronic format compatible with the UCC's [Utilities Coordinating Committee] utility plan registry. Upon request from the Company, and subject to any licensing restrictions relating to the release of information, any available licensing digital ortho-imagery and/or mapping shall be provided by the Municipality to the Company at the Municipality's expense for the Company's use as a base map on which to submit permits to the Municipality. The Company shall, at the request of the Commissioner to support the development and improve the accuracy of the utility plan register, provide to the Municipality, in a format satisfactory to the Municipality, a listing or record of the location of Equipment installed, altered, relocated, or removed by it or on its behalf in the Highways to the date of such request. All information supplied shall only be used for facilitating the Commissioner's conduct of planning and issuance of Work permits. The information must be protected through reasonable measures and must not be shared beyond those who require it for the purposes described above, nor must it be used for any other purpose or combined with other information.	company does not maintain such a forecast. Added wording to specify which party would be responsible for specific expenses with a view to treating costs in a symmetrical manner. The last paragraph addresses confidentiality concerns raised on the record of this proceeding.
13(b)	The locates provided by the Company to the Municipality for pre-design shall contain sufficient design information and survey detail as reasonably required by the Commissioner, such as line and elevation of the Equipment within the alignments, but excluding information on depth. If the	Addresses the concern that information on Bell Canada's installations is, in some cases, either incomplete or non-existent. The wording of this section is adjusted based on a

	Company is unable to provide either the line or elevation information within an agreeable time frame, the Municipality may invoice the Company for any costs reasonably incurred by the Municipality in determining the line or elevation of the Equipment within the alignments.	similar MAA section approved by the Commission in Telecom Regulatory Policy 2009-150 to prevent Bell Canada from having to provide the City with a level of detail that is beyond industry practice.
16	Removed	There are detailed provisions throughout the MAA dealing with cost allocation and recovery, including relocation costs and costs incurred by the City in issuing permits. Regarding the costs not accounted for in the remaining sections, such as costs associated with administering the agreement, those correspond to normal costs that any municipality should expect to incur to enable service providers to serve its residents and businesses. While the administration of the MAA, and therefore the presence of Bell Canada on the City's territory, may result in an initial cost to the City, such presence is necessary and economically beneficial to the City.
18(b)	Lost parking meter revenue (net revenue loss);	As indicated in the Ledcor decision, a reasonable estimate of the causal impact of parking meters being taken out of service must represent the net loss of revenue, not the gross

		loss.
20	Upon receipt of no less than ninety (90) days' written notice from the Municipality or such other time as is reasonable having consideration for the complexity and nature of the Work required to complete the relocation and for the minimizing of the potential for service losses or interruptions that may affect the Company's customers, the Company shall relocate or commence to relocate its Equipment within a Highway. The Municipality will make a good faith effort to avoid damage to the Equipment affected by the relocation and to assist the Company in its efforts to ensure uninterrupted service to its customers.	Parties agreed to change the written-notice requirement to 90 days.
21	Adjustment of Equipment located in the Highway to accommodate a regrading, elevation adjustment or resurfacing activity by the Municipality is considered relocation, and the allocation of costs is to be determined in accordance with Section 25.	Such an adjustment should be addressed in the same way as a City-initiated relocation request as set out in Section 25 of the MAA, since the adjustment is the result of a City-initiated activity.
22	*Keep wording as proposed by the City in its proposed MAA*	This section deals with the actual relocation of Bell Canada facilities and is not repetitive of section 9(j), which addresses repairs linked to restoration work.
23	*Keep wording as proposed by the City in its proposed MAA*	The City should have the discretion to relocate equipment and recover the costs from Bell Canada, regardless of the type of situation, if Bell Canada has not responded appropriately according to the provisions

		of this agreement.
24	The Municipality will make a good faith effort to provide and approve alternative suggestions, wherever possible, for rerouting the Equipment within the Highway affected by the relocation to ensure uninterrupted service to the Company's customers. However, the Municipality cannot guarantee uninterrupted service to the Company or the Company's customers during relocation, nor is the Municipality responsible for the quality of service offered by the Company to its customers during relocation.	Section takes into consideration the fact that while the City is not responsible for ensuring that Bell Canada's services are available during relocations, all efforts should be taken to limit, as much as possible, the impact of relocation on Bell Canada's customers.
26	Prior to commencing any relocation Work, the Company shall supply to the Municipality a good faith estimate and a project plan that outlines the labour, material, Equipment, and scheduling, and that identifies the project manager for such relocation Work. The Municipality shall be entitled to review and approve the Company's proposed relocation Work and costs, and the Company shall adhere to its costs estimates for said relocation Work. The Company shall not submit any additional costs to the Municipality without the prior written consent of the Municipality. Such written consent must not be unreasonably refused by the Municipality, having regard to the actual costs incurred to perform the Work and the extent to which such additional costs were reasonably foreseeable at the time the estimate and project plan were provided to the Municipality.	This section provides the City with more cost certainty upfront, while still allowing Bell Canada to recoup costs that were not reasonably foreseeable at the time of the initial estimate provided to the City.
27(f)	in no event shall the Municipality be responsible in any way for costs incurred for relocating Equipment that is not installed in the location approved by the Municipality, it being understood that the Municipality shall not be entitled to rely on	This section will require the City to be reasonably flexible if Equipment is installed outside the location approved by the City but within a reasonable

	deviations that are minimal and do not have a material impact on the Municipality, financial or otherwise, in order to avoid responsibility for costs associated with the relocation. Where records are non-existent or Highway conditions may have changed, the parties agree to act reasonably in allocating relocation compensation;	margin of error and without a material impact on the City.
28 and 29	Every time the Company fails to comply with the terms and conditions of this Agreement, the Municipality shall provide written notice to the Company of its non-compliance whereupon the Municipality may suspend the Road Occupancy Permit until a Resolution Plan in respect to curing the non-compliance is agreed to by the Company and the Municipality in writing. Starting on the second event of non-compliance per Road Occupancy Permit, the Company shall deposit security in the form of a Letter of Credit with the Municipality, naming the Municipality as beneficiary, within five (5) business days of the Resolution Plan being agreed to by the Company and the Municipality. The amount of security shall be determined by the Commissioner, having regard to an amount that is proportional to the work being undertaken, and in no case shall the security be less than $10,000 unless agreed to by the parties. The Company shall deposit with the Municipality only one Letter of Credit per Road Occupancy Permit, regardless of the number of non-compliances associated with a given Road Occupancy Permit. If any non-compliance is not cured within ten (10) business days of the Resolution Plan being agreed to by the Company and the Municipality, the Municipality may draw on the Letter of Credit the amount required to cover the Municipality's reasonable costs to cure the non-	This wording replaces the proposed wording of Sections 28 and 29, and merges these sections into one section. This new section addresses the need for the establishment of proper incentives (which, in this section, include the potential permit suspension) to promote compliance. It also applies the principle of cost neutrality for the City by giving some assurance that should any non-compliance result in a financial burden on the City, it will have quick access to funds from Bell Canada to cover any related financial shortfall. Both the possibility of having the Road Occupancy Permit suspended until a Resolution Plan is agreed upon and having to deposit security in the form of a Letter of Credit in the amount of no less than $10,000 will provide appropriate incentives to better ensure compliance with the terms and

	compliances. The security, or remaining of, if any, shall be released by the Municipality within five (5) business days after the Municipality's acceptance of the completion of the Company's final restoration Work to the Highway associated with the Road Occupancy Permit.	conditions of this Agreement. Any financial penalty for non-compliance, as originally proposed by the City, would amount to an unjustified source of revenue, and not simply a way to achieve cost neutrality for the City.
38	Claims reported to the Company by a third party or by the Municipality (a "**Claimant**") shall be promptly investigated by the Company. The Company will report the claim to its claims adjuster(s) and/or insurer(s). The Company will take all reasonable measures to ensure that the Company's claims adjuster(s) and/or insurer(s) initiate an investigation of the claim immediately upon notice, and advise the Claimant by letter of its position regarding resolution as soon as practicable. The Company or its claims representative or insurer shall include in its letter of resolution the reasons for its position. Failure to follow this procedure shall permit the Municipality to appoint an independent adjuster to investigate the claim at the expense of the Company.	This wording is based on Bell Canada's proposed text. The Commission agrees with Bell Canada that it cannot dictate to its insurers how to settle claims.